IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 680 of 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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UNITED INDIA INSURANCE CO.LTD. - Appellant(s)
Versus
MINOR PRITIBEN ARVINDBHAI PANCHAL & 2 - Defendant(s)

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Appearance :
MR PV NANAVATI for Appellant(s) : 1,
MR MP PRAJAPATI for Defendant(s) : 1,
None for Defendant(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 30/08/2006

ORAL JUDGMENT

1. By way of this appeal, the appellant has challenged the judgement and award dated 15.01.89 passed by the Motor Accident Claims Tribunal, Sabarkantha at Himmatnagar in MACP No. 422 of 1985 whereby the Tribunal awarded a sum of Rs. 57,422/- by way of compensation payable to the original claimant by the original opponents.

2. The original claimant- respondent no.1 herein had filed claim petition claiming compensation to the

tune of Rs. 80,000/- in respect of the injuries sustained by her due to the vehicular accident which occurred on 01.07.85 while the claimant alongwith her grand mother was going towards Ambaji temple situated near police line. At that time, a jeep car driven by original opponent no. 1 in a rash and negligent manner came on the wrong side and dashed with the claimant as a result of which she sustained serious injuries on the legs, head and other parts of the body. The claim petition came to be filed under the said circumstance. The Tribunal after hearing the parties passed the aforesaid award.

3. Mr P.V Nanavati, learned counsel for the appellant has contended that the inferences drawn and the conclusions arrived at by the Tribunal are erroneous as the Tribunal held that there was no misrepresentation or non-disclosure of material facts by the insured to the original opponent no. 2-present appellant when it accepted the proposal of insurance in respect of the vehicle on 01.07.85. He has strongly placed reliance on a decision of the Division Bench of this Court in the case of **United**

India Fire & Genl. Ins. Co. Ltd. v. Naniben and others reported in 1993 ACJ 838 to substantiate his point.

4. Mr M.P Prajapati, learned counsel appearing for the original claimant-respondent no. 1 herein has submitted that the contention raised by the appellant is qua the owner and the claimant should not be penalized for the fraud committed by the owner of the vehicle. He has submitted that in the alternative the insurance company can pay the claimant and in turn recover the same from the owner of the vehicle.

5. Heard learned counsel for the parties and gone through the materials placed on record including the award of the Tribunal. From the records, more particularly, column 7 of the proposal form, it is stated that the vehicle in question has not met with any accident which is a clear fraud as the accident had occurred on the same day at 08.00 am.

5.1 In the case of United India Fire & Genl. Ins. C. Ltd. (supra) it is held that the policy is void on

account of suppression of material fact on the part of the owner, the same not having been disclosed in the proposal form and the insurer is not liable to meet the award that may have been passed against the owner and the driver of the vehicle in question in a case where the car was not insured at the time of accident which occurred in the morning and the owner obtained insurance cover on the same day afternoon without disclosing in the proposal form that the vehicle had met with an accident.

5.2 As a result of hearing and perusal of records, I am of the view that the contention raised by the appellant is required to be accepted in view of the decision of the Division Bench of this Court. However, the original claimant should not suffer due to the non-disclosure of the material facts by the owner of the vehicle. In that view of the matter, I am of the opinion that interest of justice will be served by directing the insurance company to compensate the original claimant as per the award of the Tribunal and thereafter to recover the same from the owner of the vehicle.

6. In the premises aforesaid, the appeal is partly allowed. The insurance company shall pay the amount of compensation as awarded by the Tribunal to the original claimant and thereafter recover the same from the owner of the vehicle. However, it is made clear that the amount deposited by the insurance company by way of FDR shall be allowed to be withdrawn by the original claimant. The award of the Tribunal is modified accordingly. No order as to costs.

(K.S. JHAVERI, J.)

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